IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

LA.App..No. 535 of 2001()

LAR.2/1989 of SUB COURT,KOTTARAKKARA
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APPELLANT/2nd ADDL.RESPONDENT:

REHABILITATION PLANTATIONS LIMITED, PUNALUR.

BY ADV. SRI.M.PATHROSE MATHAI
SRI.SAJI VARGHESE
SMT.MARIAM MATHAI

RESPONDENTS/CLAIMANTS:
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1. **S.RAMAKRISHNA IYER,**
SHANMUGHA VILASOM BUNGLOW, PUNALUR MURI ,
PUNALUR VILLAGE, PATHANAPURAM TALUK.

2. **S.KRISHNAMMAL, RESIDING AT T.C.NO.31/275**
POONKUNNAM, TRICHUR, FROM SHANMUGHA VILASOM
BUNGLOW, -DO- -DO-
REPRESENTED BY POWER OF ATTORNEY
HOLDER 1ST RESPONDENT.

3. **S.SARADAMMAL, RESIDES AT WAVIKERS PARVATHY NIVAS,**
BHANDRJI CROSS ROAD, MALLUNGA, BOMBAY 19 FROM
SHANMUGHA VILASOM BUNGLOW , -DO- -DO-
REPRESENTED BY POWER OF ATTORNEY HOLDER 1ST RESPONDENT.
(DIED)

4. **RADHAMMAL RESIDES AT AMBIKALAYAM,**
CHETTIKULANGARA, THIRUVANANTHAPURAM
FROM SHANMUGHA VILASOM BUNGLOW REPRESENTED
BY POWER OF ATTORNEY HOLDER 1ST RESPONDENT.

5. **N.RAMACHANDRAN, ADMINISTRATIVE OFFICER,**
LIC, THANJAVOOR, RESIDING AT 181/1161,
WEST MANI STREET, THANJAVOOR, THANJAVOOR DISTRICT,
TAMILNADU.

6. R. LAKSHMY (MINOR) RESIDES AT 181/1161, WEST MANI STREET, THANJAVOOR, THANJAVOOR DISTRICT, TAMILNADU REPRESENTED BY GUARDIAN AND NEXT FRIEND S.RAMAKRISHNA IYER.

7. S.BALASUBRAMONY RESIDES AT SHANMUGHA VILASOM PUNALUR MURI, PUNALUR VILLAGE, PATHANAPURAM TALUK, REPRESENTED BY 1ST RESPONDENT.

8. STATE OF KERALA REPRESENTED BY THE ADVOCATE GENERAL

<u>LRS OF R3 IMPLEADED AS ADDL.R9 TO R13</u>

ADDL.R9: K.VENKITESWARAN, NO.2, PLOT 62, PARVATHI NIVAS, BHANDAJ CROSS ROAD, MATTANGA, MUMBAI - 19.

ADDL.R10. V.RAMAKRISHNAN, NO.2, PLOT 62, PARVATHI NIVAS, BHANDAJ CROSS ROAD, MATTANGA, MUMBAI - 19.

ADDL.R11. GOMATHI GOPALAN, NO.2, PLOT 62, PARVATHI NIVAS, BHANDAJ CROSS ROAD, MATTANGA, MUMBAI - 19.

ADDL.R12. RUKMANI BALAKRISHNAN, NO.2, PLOT 62, PARVATHI NIVAS, BHANDAJ CROSS ROAD, MATTANGA, MUMBAI - 19.

ADDL.R13. JAYASREE RAMANI, NO.2, PLOT 62, PARVATHI NIVAS, BHANDAJ CROSS ROAD, MATTANGA, MUMBAI - 19.

(ADDITIONAL RESPONDENTS 9 TO 13, WHO ARE THE LEGAL HEIRS OF DECEASED 3RD RESPONDENT, IMPLEADED VIDE ORDER DT.11.9.2007 IN I.A.NO.2331/2005)

BY SRI.B.KRISHNAN
SRI.R.PARTHASARATHY
SRI.ASAD (NO MEMO)
GOVERNMENT PLEADER, SMT.K.K.DEEPA

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 10/12/2007, ALONG WITH LAA NO.630 OF 2001, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.2892/2001 IN L.A.A.NO.535/2001

DISMISSED.

SD/- KURIAN JOSEPH, J.

10.12.2007 **SD/- HARUN-UL-RASHID, J.**

//TRUE COPY//

PA TO JUDGE.

KURIAN JOSEPH & HARUN-UL-RASHID,JJ.

L.A.A. NOS. 535 & 630 OF 2001

Dated this the 10th day of December, 2007

JUDGMENT

Harun-Ul-Rashid,J.

The above appeals are filed respectively by the Requisitioning Authority and the claimants challenging the judgment and decree dated 30.11.2000 in L.A.R. No.2 of 1989 on the file of the Sub Court, Kottarakkara.

2. An extent of 11.20 Ares of land in Punalur village was acquired for the construction of the Head office building of the Rehabilitation Plantation Limited. Section 4(1) notification was published on 10.2.1987. The Land Acquisition Officer awarded land value at the rate of Rs.48,856/- per Are as against a claim of Rs.1,00,000/- per cent. According to the claimants, the acquired property is situated in a commercially important locality in Punalur town, near to the Punalur Municipal office, Taluk office, K.S.R.T.C. bus stand etc. The reference court, after evaluating the evidence on record, came to the conclusion that the claimants have not discharged their burden of proving their entitlement to receive higher

compensation than what has been awarded by the Land Acquisition Officer. At the same time, the court below took note of the fact that the property is lying in an important locality, that the land value is increasing day by day and the fact of increase in land value was not taken note of by the Land Acquisition Officer in the right perspective. The court below also noticed the fact that the Land Acquisition Officer awarded 15% more land value than the basis land considering the fact that the land value was increasing in that locality. Finding that the acquired land is situated in the Municipal town area and considering its potentiality for development, the court below refixed the land value by granting 20% more than the value fixed by the Land Acquisition officer.

3. We have noticed the fact that the acquired land is lying in an important locality in Punalur town and it abuts the Anchal -Punalur Road. The distance from the most important part of Punalur town to the acquired land, according to the appellants - claimants, is 350 metres. We have also noticed the fact that the K.S.R.T.C. bus stand is situated near to the acquired land and buses are plying through the road touching the acquired land. The Commissioner also reported about the importance of the acquired land, its nearness to Punalur town and the important institutions in the town. According to the claimants, because of its locational

importance, the property can be used as site for hotels, cinema theatres or commercial shopping complex. The evidence tendered by the Commissioner as CW.1 is discussed in paragraph 15 of the judgment. The reference court also relied on Ext.R3 certificate which would go to show that important institutions are situated within an average distance of about 300 metres and that the K.S.R.T.C. bus stand is only 110 metres away from the acquired land.

4. Learned counsel appearing for the appellant in L.A.A. No.535 of 2001 contends that the claimants failed to adduce any evidence at all in support of their claim for enhanced compensation, that not a single sale deed of comparable land at the time of Section 4(1) notification was produced and that refixation of land value by the court below is without any basis. Counsel further submits that the acquired land is not located in an important part of the town, that the property lies away from the Government and other institutions, that the institutions referred to by the claimants were established or set up after Section 4(1) notification, that the acquired land lying by the side of the river is likely to be submerged during the floods and, therefore, grant of 20% increase in addition to the value fixed by the Land Acquisition Officer is totally erroneous and arbitrary.

5. Learned counsel appearing for the appellants in L.A.A. No.630 of 2001 contends that the acquired land is situated facing the main road and the basis land lies away from the main road facing only the municipal road. However, it is seen that the reference court has compared both the properties and has in fact entered a finding that the properties are similar and similarly situated. Only if the properties are similar and similarly situated, can there be such a finding, it is contended. Still further, there is a grievance that the locational importance as reported by the Advocate Commissioner and supported by the other evidence available on record has not been adverted to by the reference court.

6. On going through the judgment, we find that there is substance in the contentions raised by the learned counsel appearing for the appellants in both the set of appeals that relevant factors have not been taken into consideration in the matter of fixation of land value by the reference court, some of which we have already referred to above. It is the duty of the reference court under the Land Acquisition Act to fix the market value of the property having regard to the materials on record. Therefore, in the interest of justice, we are of the view that the matter requires fresh consideration by the reference court.

In the result, we set aside the judgment and decree and remand the case for fresh consideration in accordance with law. The parties are at liberty to adduce further evidence, if any. The appellants in both the appeals are entitled to refund of the court fee.

(KURIAN JOSEPH, JUDGE)

(HARUN-UL-RASHID, JUDGE)

sp/

KURIAN JOSEPH &
HAURN-UL-RASHID, JJ.

L.A.A.NOS.535 & 630/2001

JUDGMENT

10TH DECEMBER, 2007